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By: **Senator McFadden (By Request - Baltimore City Administration)**

Introduced and read first time: January 31, 2003

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Wiretap and Electronic Surveillance - Law Enforcement Officers**

3 FOR the purpose of adding criminal violations that are committed by law  
4 enforcement officers to those crimes for which evidence may be gathered by  
5 interception of oral, wire, or electronic communications under certain  
6 circumstances and for which certain persons may apply to a judge for an order  
7 authorizing the interception of oral, wire, or electronic communications;  
8 authorizing certain interceptions to be used to provide evidence in certain  
9 administrative investigations; prohibiting certain findings from being used as  
10 evidence in a certain criminal investigation; and generally relating to  
11 wiretapping and electronic surveillance.

12 BY repealing and reenacting, with amendments,  
13 Article - Courts and Judicial Proceedings  
14 Section 10-402(c)(2) and 10-406  
15 Annotated Code of Maryland  
16 (2002 Replacement Volume)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article - Courts and Judicial Proceedings**

20 10-402.

21 (c) (2) (i) This paragraph applies to an interception in which:

22 1. The investigative or law enforcement officer or other  
23 person is a party to the communication; or

24 2. One of the parties to the communication has given prior  
25 consent to the interception.

26 (ii) It is lawful under this subtitle for an investigative or law  
27 enforcement officer acting in a criminal investigation or any other person acting at  
28 the prior direction and under the supervision of an investigative or law enforcement

1 officer to intercept a wire, oral, or electronic communication in order to provide  
2 evidence:

- 3                                   1.       Of the commission of:
  - 4                                   A.       Murder;
  - 5                                   B.       Kidnapping;
  - 6                                   C.       Rape;
  - 7                                   D.       A sexual offense in the first or second degree;
  - 8                                   E.       Child abuse;
  - 9                                   F.       Child pornography under § 11-207 or § 11-208 of the  
10 Criminal Law Article;
  - 11                                  G.       Gambling;
  - 12                                  H.       Robbery under § 3-402 or § 3-403 of the Criminal Law  
13 Article;
  - 14                                  I.       A felony under Title 6, Subtitle 1 of the Criminal Law  
15 Article;
  - 16                                  J.       Bribery;
  - 17                                  K.       Extortion;
  - 18                                  L.       Dealing in a controlled dangerous substance, including a  
19 violation of § 5-617 or § 5-619 of the Criminal Law Article;
  - 20                                  M.       A fraudulent insurance act, as defined in Title 27, Subtitle  
21 4 of the Insurance Article;
  - 22                                  N.       An offense relating to destructive devices under § 4-503 of  
23 the Criminal Law Article; [or]
  - 24                                  O.       A CRIMINAL VIOLATION COMMITTED BY A LAW  
25 ENFORCEMENT OFFICER WHILE THE LAW ENFORCEMENT OFFICER IS ON DUTY; OR
  - 26                                  P.       A conspiracy or solicitation to commit an offense listed in  
27 items A through [N] O of this item; or
- 28                                   2.       If:
  - 29                                   A.       A person has created a barricade situation; and
  - 30                                   B.       Probable cause exists for the investigative or law  
31 enforcement officer to believe a hostage or hostages may be involved.

1 (III) 1. IT IS LAWFUL UNDER THIS SUBTITLE FOR AN  
2 INTERCEPTION OF A WIRE, ORAL, OR ELECTRONIC COMMUNICATION TO BE USED TO  
3 PROVIDE EVIDENCE IN AN ADMINISTRATIVE INVESTIGATION OF A LAW  
4 ENFORCEMENT OFFICER.

5 2. THE FINDINGS FROM AN ADMINISTRATIVE  
6 INVESTIGATION MAY NOT BE USED AS EVIDENCE IN A CRIMINAL INVESTIGATION OF  
7 A LAW ENFORCEMENT OFFICER.

8 10-406.

9 (a) The Attorney General, State Prosecutor, or any State's Attorney may apply  
10 to a judge of competent jurisdiction, and the judge, in accordance with the provisions  
11 of § 10-408 of this subtitle, may grant an order authorizing the interception of wire,  
12 oral, or electronic communications by investigative or law enforcement officers when  
13 the interception may provide or has provided evidence of the commission of:

14 (1) Murder;

15 (2) Kidnapping;

16 (3) Child pornography under § 11-207 or § 11-208 of the Criminal Law  
17 Article;

18 (4) Gambling;

19 (5) Robbery under § 3-402 or § 3-403 of the Criminal Law Article;

20 (6) A felony under Title 6, Subtitle 1 of the Criminal Law Article;

21 (7) Bribery;

22 (8) Extortion;

23 (9) Dealing in a controlled dangerous substance;

24 (10) An offense relating to destructive devices under § 4-503 of the  
25 Criminal Law Article; [or]

26 (11) A CRIMINAL VIOLATION COMMITTED BY A LAW ENFORCEMENT  
27 OFFICER WHILE ON DUTY; OR

28 (12) A conspiracy or solicitation to commit an offense listed in items (1)  
29 through [(10)] (11) of this subsection.

30 (b) No application or order shall be required if the interception is lawful under  
31 the provisions of § 10-402(c) of this subtitle.

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
33 October 1, 2003.